

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 962 of 1993
WITH
FIRST APPEAL No. 963 of 1993****For Approval and Signature:****HONOURABLE MR. JUSTICE B.J.SHETHNA
AND
HONOURABLE MR.JUSTICE H.B.ANTANI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy
of the judgment?

4 Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any Order made
thereunder?

5 Whether it is to be circulated to the Civil
Judge?

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FIRST APPEAL NO. 962 OF 1993**BACHUSA DADUSHA AND ANOTHER - Appellants
Versus
SHARDABEN CHANDUBHAI PATEL AND OTHERS - Respondents****WITH****FIRST APPEAL NO. 963 OF 1993****BACHUSA DADUSHA AND ANOTHER - Appellants
Versus
BHAGAJI GANDAJI THAKORE AND OTHERS - Respondents**

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Appearance in both the appeals :

MR RAJNI H MEHTA for the Appellants.

MR KIRAN C MEHTA for the Respondents-claimants.

MR AJAY R MEHTA for Respondent-Insurance Company.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 06/11/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

1. These appeals preferred under Section 110 D of the Motor Vehicles Act, 1939 are disposed of by the common judgment arising out of the judgment and award dated 21-11-1992 passed by the Motor Accident Claim Tribunal (Main), Ahmedabad (Rural) at Mirzapur, Ahmedabad (for short, "*the Tribunal*"), by which the learned Tribunal disposed of Motor Accident Claim Petitions No. 50 of 1987 and 51 of 1987. The Tribunal also disposed of another Motor Accident Claim Petition No. 367 of 1987 by the said common judgment which has remained unchallenged. Both the appeals have been admitted and by interim orders, the impugned judgments and awards passed by the learned Tribunal are stayed on certain terms and conditions.

2. The incident in question took place on 05-01-1987 at 8.30 AM, near Ujala Hotel on the Ahmedabad Bavla Road, when Truck bearing No. GTH 7277 collided with Scooter bearing No. GUE 3373 having side-car and it resulted into the death of the driver of the scooter, whose heirs and legal representatives filed MACP No. 50 of 1987 and another person sitting in the

side-car whose heirs and legal representatives filed MACP No. 51 of 1987. The person, travelling on the Scooter as a pillion-rider, also sustained injuries and she preferred MACP No. 367 of 1987. As stated earlier, the impugned common judgment and award passed by the learned Tribunal in favour of Motor Accident Claim Petition No. 367 of 1987 has remained unchallenged by the appellants.

3. Mr. Rajni H. Mehta, learned Counsel for the appellants, has vehemently submitted that the accident happened due to sole negligence of the scooter-driver, and in the alternative, he submitted that the deceased scooter-driver was more negligent. Mr. Mehta has further submitted that the amount awarded by the Tribunal is on the higher side. Mr. Mehta has challenged the quantum of award in MACP No. 50 of 1987 to the extent of Rs. 2,50,000/- and in MACP No. 51 of 1987 to the extent of Rs. 50,000/-.

4. This Court has heard Mr. Rajni H. Mehta, learned Counsel for the appellants, Mr. Kiran C. Mehta, learned Advocate for the respondents-claimants and Mr. Ajay R. Mehta, learned Advocate for the respondent-Insurance Company, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record of the case.

4.1 In respect of the submissions regarding

negligence canvassed by Mr. R. H. Mehta, learned Counsel for the appellants, it is to be stated that the eye-witness, who is the claimant in MACP No. 367 of 1987, has been examined, and she has deposed that the scooter was being driven on the left-hand-side of the road and at a very moderate speed. It is borne out from the record that the truck-driver was not examined by the opponents. In our view, the learned Judge, after considering the oral evidence, the *panchanama* vide Exh. 51 and photographs produced vide Exh. 35, has rightly come to the conclusion that accident in question happened due to the sole negligence of the driver of the truck and, therefore, the finding given by the learned Tribunal is unassailable.

4.2 Mr. Mehta further challenged quantum in MACP No. 50 of 1987 mainly on the ground that the agricultural lands were not of the sole ownership of the deceased but were held jointly along with his brothers. However, we find that the learned Tribunal, after considering various judgments of the High Court and the deceased's income from brick-kiln and deducting the personal expenses, has rightly come to the conclusion that the dependency loss to the claimants was Rs. 2,500/- per month, i.e. Rs. 30,000/- per year, and applied multiplier of 12 as deceased was 45 years of age as per post-mortem notes. We also find that the learned Tribunal has awarded Rs. 10,000/- for loss of expectancy of life, Rs. 2,000/- being expenses for after-death ceremony

and Rs. 8,000/- as damage to the scooter. In the facts and circumstances of the case, the total award of Rs. 3,80,000/- to the claimant is just and proper and needs no interference by this Court.

4.3 Mr. Mehta has challenged quantum in MACP No. 51 of 1987 on the ground that the deceased was only a house-wife and the Tribunal's conclusion was erroneous that she was tending buffaloes and doing labour work. We have considered the evidence and detailed findings and conclusion of the learned Tribunal in paragraphs 18 to 21 of the judgment regarding award of Rs. 1,08,000/- in MACP No. 51 of 1987. We agree with the submission of Mr. Mehta that the application of multiplier of 20 by the Tribunal is certainly on the higher side. However, as the amount of Rs. 1,08,000/- is just and proper, the award does not require any interference.

5. In view of the foregoing discussion, the impugned appeals do not call for any interference by this Court, and as both the appeals are devoid of merits, the same are liable to be dismissed. Hence, we pass the following order:

O R D E R

Both these appeals fail and are dismissed. Stay granted earlier stands vacated. However, in the facts and circumstances of the case, there will be no order as to costs.

[B. J. SHETHNA, J.]

[H. B. ANTANI, J.]

/shamnath